

HOUSE BILL REPORT

ESSB 5720

As Passed House:

April 13, 2005

Title: An act relating to employee noncompetition agreements in the broadcasting industry.

Brief Description: Placing limitations on employee noncompetition agreements in the broadcasting industry.

Sponsors: By Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Keiser, Franklin and McAuliffe).

Brief History:

Committee Activity:

Commerce & Labor: 3/24/05, 3/30/05 [DP].

Floor Activity:

Passed House: 4/13/05, 56-40.

Brief Summary of Engrossed Substitute Bill

- Makes employee noncompetition agreements void and unenforceable if broadcasting industry employers terminate without just cause or lay off employees subject to such agreements.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 4 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins and McCoy.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Sump, Assistant Ranking Minority Member; and Crouse.

Staff: Jill Reinmuth (786-7134).

Background:

Noncompetition clauses are provisions within an employment contract that restrict an employee from competing with his or her employer. These clauses typically restrict an employee from engaging in business activities in which the employee competes with the employer, or accepting employment with another business that competes with the employer. They also restrict an employee's activities for a specific period of time and in a specific geographic area.

Washington courts enforce "reasonable" noncompetition clauses. Courts consider three factors when deciding if a clause is reasonable:

- Whether restraining the employee from performing services is necessary for the protection of the business or goodwill of the employer.
- Whether the clause harms the employee more than is reasonably necessary to secure the employer's business or goodwill.
- Whether the loss of the employee's services and skills injures the public to a degree warranting nonenforcement of the clause.

Courts also look at the relative bargaining power of the employee and employer upon entering the employment relationship, and the motives of both when terminating the relationship.

Summary of Bill:

An employee noncompetition agreement is void and unenforceable if the broadcasting industry employer terminates without just cause or lays off the employee subject to the agreement.

Broadcasting industry employers maintain their rights to protect trade secrets or other proprietary information by lawful means.

Broadcasting industry employers and employees also maintain any rights or liabilities resulting from employee noncompetition agreements entered into before December 31, 2005.

Various terms, including "employee," "employer," "broadcasting industry," and "employee noncompetition agreement," are defined.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: There is an agreement among the stakeholders. If a broadcasting industry employee is terminated from employment, any noncompetition clause is null and void.

(Neutral) We are neutral on this bill.

Testimony Against: None.

Persons Testifying: (In support) Senator Keiser, prime sponsor.

(Neutral) Mark Allen, Washington Association of Broadcasters.

Persons Signed In To Testify But Not Testifying: None.